IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3817 of 2006
Date of Decision: 14.11.2006

Virsa Singh ...Appellant

Versus

Sarwinder Singh etc. ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri B.R. Mahajan, Advocate, for the appellant.

JUDGMENT

Defendant No. 6 is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for declaration filed by the plaintiff-respondent to the effect that he is owner of the land measuring 65 kanals 14 marlas, was decreed.

Admittedly, one Hira Devi was owner of the said suit land, who died on 29.12.1961. The plaintiff claimed the estate of said Hira Devi, on the basis of Will dated 26.5.1952. The defendnat-appellant claims to be lessee on the suit land and purchaser of 1/4th share from heirs of Rajinder Kaur vide sale deed dated 13.11.1991. The learned trial Court found that in a previous suit No. 71 of 1972, the issue regarding Will has been finally decided vide judgment dated 29.3.1974 Exhibit P.3 and, therefore, it was not mandatory for the plaintiff to again prove the Will dated 26.5.1952 in the present suit. Thus, it was held that the plaintiff is sole owner of the movable and immovable property owned by Hira Devi and the predecessors-in-interest of defendant Nos. 1 to 3 had no right, title or

interest in the suit land. The defendant relied upon the judgment and decree Exhibits D.21 and D.22 to assert that the findings recorded therein operate as resjudicata as the said judgment and decree is between the parties, in respect of inheritance of Hira Devi. It has been held by the Courts below that the judgment and decree Exhibit P.3 can not be superseded by the subsequent judgment and decree Exhibits D.21 and D.22.

The judgment Exhibit P.3, has been appended by the appellant herein as Annexure A.6. A perusal of the said judgment would show that Issue No. 1 framed therein was to the effect that whether Smt. Hira Devi executed a valid Will in favour of the plaintiff relating to the box in question. The predecessor-in-interest of the defendant i.e. Rajinder Kaur, was a party in the said suit. In the said suit, a finding was returned that Hira Devi had executed a valid Will in favour of her son Sarvinder Singh, i.e. the present plaintiff. In the said case, the Will was proved by Col. Gurbax Singh Sahi an attesting witness. The judgment and decree Exhibits D.21 and D.22 have arisen out of a suit, the plaint of which is appended as Annexure A.1. A perusal of the said plaint shows that it was a case for recovery of lease money of Rs.4800/- with effect from 1.4.1981 to 31.3.1984. The the present plaintiff was also the plaintiff in the aforesaid suit and he has averred that plaintiff and defendant Nos. 2 to 4 are the owners of the said garden and the plaintiff and defendant Nos. 2 to 4 are entitled to recover the price of the fruits from the aforesaid garden from defendant No.1 i.e. the present appellant.

Learned counsel for the appellant has vehemently contended that in the said suit, the plaintiff had not relied upon the Will dated 26.5.1952 nor made any reference to previous judgment and decree dated

29.3.1974 and therefore, the plaintiff by his conduct has waived his rights arising under the aforesaid Will. Therefore, the appellant having purchased 1/4th share from one of the legal heirs of the deceased Hira Devi, cannot be said to be without any valid title.

The judgment and decree between the legal heirs of Hira Devi including the predecessor-in-interest of the appellant is Exhibit P.3. The said suit is in respect of Will allegedly executed by Smt. Hira Devi. It was held therein that the execution of the Will is proved. May be in the subsequent suit, the Will was not relied upon but non-reliance of the Will in the subsequent proceedings will not negate the title of the plaintiff over the suit land in respect of which he has already got the declaration. The subsequent suit was a simplicitor suit for recovery of the lease money and, therefore, the plaintiff may not have thought it necessary to assert exclusive title in him, but that will not act as an estoppel in respect of the title of the suit property, which was already declared in his favour way back in the year 1974.

Learned counsel for the appellant has argued that the Will dated 23.5.1952 has not been proved in the present proceedings in as much as none of the attesting witnesses has been examined nor the original Will was proved, nor any secondary evidence to that effect was sought for. Therefore, the plaintiff could not have been granted the declaration on the basis of Will, the copy of which is Exhibit P.1.

I do not find any merit in the said argument of the learned counsel for the appellant as well. The plaintiff has got declaration in respect of his title over the suit property by virtue of a Will in a previously instituted suit way back on 29.3.1974. In the said case, the Will was duly

proved. The findings recorded therein will operate as resjudicata in the present case, in as much as the vendor of the defendant-appellant was a party to the said suit, therefore, it was not necessary for the plaintiff to lead evidence to prove the Will again in the present case.

In view of the concurrent findings of fact recorded by the Courts below, I do not find that any substantial question of law arises for consideration in the present appeal.

Hence, the present appeal is dismissed.

14-11-2006 (HEMANT GUPTA)
ds JUDGE